

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**  
OCT 17 2018  
Clerk, U.S. District Court  
District Of Montana  
Missoula

WAYNE A. HUSSAR, II,

Plaintiff,

vs.

(LEWIS & CLARK COUNTY) U.S.  
DISTRICT COURT,

Defendants.

CV 18-141-M-DLC

ORDER

Plaintiff Wayne A. Hussar, II ("Hussar") is a state prisoner proceeding *pro se*. Hussar has filed a civil Complaint (Doc. 2) and has moved for leave to proceed in forma pauperis (Doc. 1). Hussar claims that his prior suits filed in this Court were illegally dismissed.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on August 14, 2018. (Doc. 3). Judge Lynch recommended that Hussar's Motion to Proceed in Forma Pauperis be denied because Hussar is barred from proceeding by the three strikes provision in 28 U.S.C. § 1915(g). (*Id.* at 1-3.) Hussar is not entitled to object to Judge Lynch's Findings and Recommendation in this case. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). As a result, this Court reviews the

Findings and Recommendation for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

The Court finds no clear error in Judge Lynch’s determination that Hussar is subject to the three strikes provision of 28 U.S.C. § 1915(g) and has failed to meet the “imminent danger of serious physical injury” exception. Accordingly, the Court agrees with Judge Lynch that Hussar should not be allowed to proceed in forma pauperis. Ordinarily, the Court would give Hussar an opportunity to pay the full filing fee of \$400.00 but, in this case, Hussar knew that he was subject to the three strikes provision and, consequently, knew that he needed to either pay the fee or demonstrate imminent danger of serious physical harm. *See Hussar v. Lewis and Clark Cnty. Det. Ctr.*, No. 17–55–M–DLC–JTJ, Doc. 4 at 2 (D. Mont. June 21, 2017). Therefore, Hussar will not be provided the opportunity to pay the filing fee now. Accordingly,

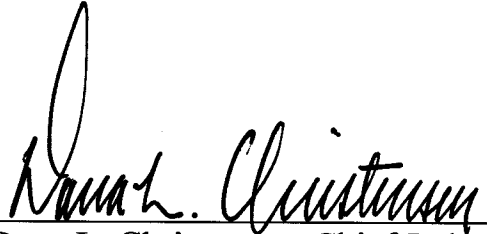
IT IS ORDERED that Judge Lynch’s Findings and Recommendation (Doc. 3) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Hussar's Motion to Proceed in Forma Pauperis (Doc. 1) is DENIED pursuant to 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that the Clerk of Court is directed to close this case and enter judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS FURTHER ORDERED that no motions for reconsideration or rehearing will be entertained and the Clerk of Court is directed to discard any such motions.

DATED this 17<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
Dana L. Christensen, Chief Judge  
United States District Court